

APPEAL NO. 040962
FILED JUNE 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 12, 2004. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 9th quarter, but is entitled to SIBs for the 10th quarter. The appellant/cross-respondent (carrier) appealed the hearing officer's determination that the claimant is entitled to SIBs for the 10th quarter. The claimant appealed the hearing officer's determination that she is not entitled to SIBs for the 9th quarter. No responses were filed.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods for the 9th and 10th quarters. The claimant contended that she had no ability to work due to her compensable injury for part of the qualifying period for the 9th quarter, that she looked for work commensurate with her ability to work every week for the remainder of the qualifying period for the 9th quarter, and that she looked for work commensurate with her ability to work every week of the qualifying period for the 10th quarter.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(e) lists information to be considered in determining whether a good faith effort to obtain employment has been made.

In the instant case, the claimant did not provide a narrative report from a doctor which specifically explained how the injury caused a total inability to work, there were

other records which showed that the claimant was able to return to work in at least a light-duty capacity during the qualifying periods for the 9th and 10th quarters, the claimant did not document a job search during the first six weeks of the qualifying period for the 9th quarter, and the claimant did document a job search every week of the qualifying period for the 10th quarter. The hearing officer found that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the 9th quarter, but that the claimant did make a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the 10th quarter. The hearing officer concluded that the claimant is not entitled to SIBs for the 9th quarter, but is entitled to SIBs for the 10th quarter. We conclude that the hearing officer's determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge